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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Internally displaced persons

Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95

Addendum

Profiles in displacement: Sri Lanka

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PROFILES IN DISPLACEMENT: SRI LANKA

Introduction

1. At the invitation of the Government of Sri Lanka the Representative of the Secretary-General on internally displaced persons visited the country from 10 to 17 November 1993. This report describes the findings of the mission and the dialogue in which the Representative engaged with the Government, with a view to appreciating the crisis of internal displacement not only in Sri Lanka but also as a worldwide phenomenon.

2. The approach taken by the Representative in Sri Lanka as a case study typified his general methodological orientation in carrying out his mandate. As explained in the report to the Commission, this rests on the recognition that internally displaced persons fall within the domestic jurisdiction and therefore the national sovereignty of the countries concerned. It is also based on the fundamental assumption that national sovereignty carries with it responsibilities toward the citizens and that under normal circumstances Governments do in fact discharge that responsibility. The crisis of internal displacement, however, creates special problems which may prevent Governments from providing their citizens with adequate protection and assistance. Under those circumstances, Governments are expected to invite, or at least welcome, international cooperation to supplement or complement their own efforts.

3. Building upon the notions of respect for sovereignty and recognition of the responsibilities associated with it, the Representative of the Secretary-General aims at discharging his mandate, in a spirit of cooperation with the Governments, to try to understand the problems of internal displacement, the obstacles to providing adequate protection and assistance, and what needs to be done both by the country concerned and the international community to remedy the situation. Where Governments are unable or unwilling to provide protection and assistance to the suffering masses and unreceptive to international assistance, the international community is expected to step in assertively in order to fill the moral vacuum created by the failure of the Government to discharge the responsibility of sovereignty.

4. The Representative of the Secretary-General also places great importance on linking the humanitarian and human rights issues involved with the challenge of peace as the most effective means of removing the underlying causes of displacement, often the result of internal conflicts. Without peaceful management or resolution of these conflicts, there can be no effective and durable answers to the problems of internal displacement. While conflict resolution is not within his mandate, the Representative of the Secretary-General considers his role in conveying this message to the principal parties to internal conflicts and to the international community as catalytic.

5. If the Representative of the Secretary-General were to visit the countries with acute displacement problems and find that there were no significant cause for concern, the mandate would be superfluous. Indeed, it is, the existence of serious problems that require urgent remedies, the cooperation of Governments in exploring and addressing those problems, and a positive response on the part of the international community that make the

mandate a humanitarian and human rights challenge. This was, in essence, the case with the field visit of the Representative of the Secretary-General to Sri Lanka.

6. The Representative wishes to emphasize that he received full cooperation and assistance from the Government of Sri Lanka, in particular from the Ministry of Foreign Affairs and the Ministry of Reconstruction, Rehabilitation and Social Welfare, which acted as coordinators of the visit. Logistical arrangements for his travel were most efficiently carried out and all requests for meetings with representatives of non-governmental organizations and other individuals were willingly accepted.

7. The Representative was received by the Ministers of Foreign Affairs and of Reconstruction, Rehabilitation and Social Welfare, and also by the Presidential Adviser on International Affairs and the Attorney-General of the Republic. He met with senior officials from the Ministry of Foreign Affairs and the Ministry of Reconstruction, Rehabilitation and Social Welfare, as well as with members of Parliament who requested meetings with him. From the international community, the Representative met with the chiefs of mission of donor countries, representatives of specialized agencies, and the staff of NGOs. During his visits to Puttalam, Anuradhapurha, Trincomalee, Ampara and Batticaloa he was received by the representatives of the Government (Government Agents) of these districts, the divisional secretaries, the leadership of the army and the police and other regional and local officials, and field representatives of NGOs. He also met the President of the Human Rights Task Force.

8. The Representative visited not only welfare centres, but also resettlement sites and other areas affected by 10 years of conflict in Sri Lanka. He had the opportunity to talk to people in camps and resettlement villages as well as to local and international NGOs. More specifically, he met with Muslims and Sinhalese displaced persons in Puttalam and Anuradhapurha and Tamils, Muslims and Sinhalese in Trincomalee, Ampara and Batticaloa, and Tamils and Muslims in Colombo. The Representative also intended to travel to Kilinochchi to familiarize himself with conditions in the north, but the resurgence of hostilities in this area prevented him from doing so.

I. OVERVIEW OF THE CRISIS

9. According to statistics provided by the Government there were 563,029 displaced persons in the beginning of November 1993. Of these, 254,954 persons were housed in 519 welfare centres, 1/ while the rest were living with relatives or friends or had found their own accommodation. Apart from the displaced, persons affected by the war (i.e. economically affected persons who have not been displaced) and families who have been resettled (i.e. returned to their homes) are also assisted.

10. Given the volatility of the conflict, especially in the north, other sources estimate the number of the internally displaced to be higher. In 1990 alone approximately 1 million people were displaced and provided with assistance. Displacement has affected the whole of the country, but the largest single group of affected persons are Tamils from the North-eastern province. Large numbers have left the country in search of asylum abroad.

According to the authorities, in southern India alone (mainly in the State of Tamil Nadu) there are still approximately 170,000 predominantly Tamil, refugees. Also, many have left the country to seek work abroad. One of the main sources of income for displaced and affected families seems to be remittances from relatives abroad.

A. Genesis of the crisis

11. The single most important cause of the phenomenon of displacement in Sri Lanka is the ethnic conflict and inter-communal violence in the past 10 years in that country, although economic and environmental factors also contribute to displacement, as the Government has emphasized on different occasions. 2/ The following paragraphs contain a discussion of the ethnic, historical, socio-economic and political underpinnings that have contributed to the genesis of this crisis.

1. Ethnic groups

12. The population of Sri Lanka is about 17 million people. It is estimated, with slight variations, that 74 per cent of the population are Sinhalese, 18 per cent Tamils and 7 per cent Muslims (also called Moors). Almost all Sinhalese are Buddhist and speak Sinhala. Tamils are mostly Hindu and speak Tamil; they are comprised of "Ceylon" or "Jaffna" Tamils (69 per cent), with a long history on the island, and "Indian" or "estate" or "plantation" Tamils, descendants of labourers brought from southern India under British rule to work on coffee, tea and rubber plantations. The Muslims speak mostly Tamil but distinguish themselves by their religion. 3/ There are a few Christians in both the Sinhalese and the Tamil communities. 4/

13. In most of the country the Sinhalese form the majority. In the northern districts (including the Jaffna peninsula) the Ceylon Tamils are the largest community. The Indian Tamils reside mainly in the hill country in the central part of Sri Lanka. In the East things are more complicated: while Tamils and Muslims used to inhabit this area until the twentieth century, today it is said that all three communities are equally represented in terms of numbers. There are substantial Tamil and Muslim communities in the rest of the country, although they are in the minority there.

2. The pre-colonial years

14. One often hears that the present racial and religious hostilities between the Sinhalese and Tamil populations have deep historical roots, dating back to the first century A.D. Legend has it that the Sinhala race, of "Aryan" origin, was founded in the fifth century B.C. by an exiled Buddhist prince from northern India. The Tamils, of the "Dravidian" race, are said to have come from southern India in the context of incursions and immigration waves between the first and thirteenth centuries A.D.

15. While there have always been tensions between the Sinhalese and the Tamil kings, they cannot be compared to the violent intercommunal strife between the communities that materialized in the twentieth century. Under pre-modern conditions, political and religious centres were more symbolic than real,

with the units of political and cultural life enjoying considerable autonomy so long as the centre received its due share of ritual homage. 5/ Because of caste, pre-modern Sri Lanka was also segmented in a hierarchical sense.

16. Ethnic boundaries were as elsewhere "porous and indistinct". 6/ Intermarriage has been common practice for hundreds of years. For instance, many in Sri Lanka recounted that Sinhalese kings of the kingdom of Kandy would marry Tamil women in order to strengthen the ties between the different units. Tamil speakers served Sinhalese kings as soldiers, while the kingdom of Kandy, usually thought to be the last bastion of pure Sinhala Buddhist culture before it yielded to the British in 1815, was ruled in its last years by a dynasty of Tamil-speaking kings, who are said to have converted to Buddhism.

3. The effects of colonialism

17. Ideas of exclusive communal identity and of hostile competition over questions of race, language, ethnicity, religion and political control were shaped under the specific historical circumstances in the period leading up to 1948, when Ceylon (as it was then known) gained its independence from the United Kingdom. Prior to the arrival of colonialism and the Christian missionaries there was no general pattern of antagonism between the different religious groups of the island. Both the Portuguese (1505-1568) and the Dutch (1568-1796) left their mark by introducing one form of religious intolerance through the practice of targeting groups because of their religious orientation. All groups suffered from oppression and discrimination whether at the hands of aggressive Catholics or of militant Calvinists; and by the time they had departed, all groups had adopted some of the language and methods of religious radicalism.

18. The British established a system of government- and church-run schools, displacing traditional Buddhist education and thereby stripping the monks of one of their primary functions in Sinhala society. They also promoted the severance of the connection between Buddhism and the State, which became a source of resentment in the Buddhist community and later, and more importantly, "a popular rallying point in nationalist rhetoric". 7/ Significantly, the missionary organizations appear to have been much stronger in Jaffna and its environs than in most other parts of the country; their network of schools was more efficiently run and, apparently, there was less hostility to missionary activity in the Tamil areas of the country. This may account for the fact that Tamils on the whole enjoyed better education and spoke better English, and were thus frequently employed under the British-run administration.

4. The rise of nationalism

19. Colonialism also introduced beliefs about racial superiority and nationalist theories, which gained prominence in the late nineteenth and early twentieth centuries in the West. According to one theory, for instance, certain structural affinities between Indian and European languages were thought to be rooted in common racial attributes characteristic of "Aryans". Not only did this call into question the continued colonial dominance of the British over fellow "Aryans", it may have also provided arguments of racial superiority in the inter-communal competition on the island. It appears,

at least, to have strengthened a deep-rooted feeling among the Sinhalese Buddhist community that over the centuries it had been forced to defend itself and its island against invaders who had degraded what had been a remarkable Sinhala civilization. In the nationalist days of the nineteenth and twentieth centuries the Buddhist religion and the Sinhalese language inevitably became the answer to the search for a Sinhalese identity. 8/

20. Tamil nationalism at the same time grew as a response both to South Indian Tamil and to Sinhalese nationalism. Close linguistic, social and cultural links to South India account for the fact that many Hindus in Sri Lanka have looked there for religious, cultural and political inspiration. Just as the South Indian nationalist Dravidian movement called for the re-establishment of the ancient Dravidian kingdom, so Sri Lankan Tamils invoked ancient Tamil rule in Sri Lanka to support the claim that with the termination of British rule the country ought to revert to its time-honoured patterns of ethnically divided governance. Yet, as it has been pointed out, "ironically, it is the special connection, the shared history, with the Sinhala, however estranged the two groups might be, that in the end differentiates the Tamil community in Sri Lanka from that in South India and gives it a residual identity of its own. Unlike the South Indians, Sri Lankan Tamils ... feel peripheral or marginal in relation both to the Sinhala and to the South Indians, a condition that compounds their sense of frustration and distress and intensifies their longing for a homeland. This condition is particularly acute, it is suggested, for the Sri Lankan Tamil expatriate." 9/ Even more ironically, the Sinhalese community perceives itself as a vulnerable minority in the Indian subcontinent as a whole, particularly vis-à-vis the 50 million Tamils in the province of Tamil Nadu in India. This "siege mentality" has led to the description of Sri Lanka as "the island of the two minorities".

21. Ethnic divisiveness in the present century has grown because of arbitrary territorial demarcations and rival claims for water rights, rich arable lands and natural resources. Muslims have been targeted by both of the other two communities in the last 50 years, although much more by the Tamils, since they reside in areas mainly populated by the Tamil community. To illustrate the point, it has been said that tensions in the Ampara district, where the Muslims outnumber the Tamils, have grown because of the success of the former in trade and in the acquisition of land, where Tamil labourers were then employed.

B. Economy and social welfare

22. Although Sri Lanka has a very low per capita income, which places it among the 36 poorest developing nations in the world, it has a high level of literacy and education, low infant mortality rates and a relatively high average life expectancy. These extraordinary achievements in the social sector were often mentioned to the Representative. Sri Lanka has had, however, major problems of poverty and unemployment, affecting in particular the farmers in the south. The implications of the structural adjustment programmes of the World Bank and the "open market" economic policies of the Government may have led to increased disparities between the rich and the poor and some in Sri Lanka have expressed their concern that the displaced will be

amongst those most affected. Conversely, representatives of international financial institutions told the Representative that care was taken not to jeopardize these social achievements.

23. Economic conditions have their ethnic dimension also. Tamil agricultural lands in the north are said to be less extensive and productive than those of Sinhala farmers and that, therefore, Tamils have had to turn elsewhere for their economic progress. Under colonial rule, for instance, Tamils were employed in government jobs or proceeded to higher education. Their English education background gave them a comparative advantage for both these activities at that time. 10/

24. Since the United National Party came to power in 1977, Sri Lanka has relied heavily on economic aid from the West to fund its external payments deficit. It has one of the world's highest levels of foreign aid per capita. The principal donors are the members of the Aid to Sri Lanka Consortium, a group of mainly Western nations and multinational institutions convened annually by the World Bank. In June 1993 the Aid to Sri Lanka Consortium pledged $840 million for the year 1993/94, a $15 million increase over 1993 (according to a news agency in Sri Lanka). The Government faces severe budgetary constraints, however, not only because of its military expenditure (the armed forces have quadrupled in the last four years) but also because of the welfare costs of internally displaced persons. Both these issues were considered as negative by the Consortium, while among the positive factors noted was an "improvement" in the human rights record of the Government. 11/

25. Nevertheless, economic growth has been significant and Sri Lanka aims at increasing its potential even more. Some have expressed doubts, however, as to how realistic or genuine such a goal can be when the Government is involved in a serious armed conflict and when the poorest layers of the population will be placed under severe strain.

C. Political developments since independence

26. Sri Lanka's transition to independence in 1948 was relatively calm. The Soulbury Constitution of 1947 established a unitary democratic republic with a mixed presidential-parliamentary political system. Universal adult franchise was introduced in Sri Lanka in 1931 with the Donoughmore Constitution and since independence the country has held elections every six or seven years. Sri Lanka has a vigorous political opposition with 26 parties having been recognized by the Commissioner of Elections. Although members of each ethnic community can be found in many of the political parties, the two most influential ones generally draw their support from the Sinhalese community.

27. As the British departed, both Tamils and Sinhalese were left in positions of authority (partly because the colonial education system had produced an inter-communal elite). Nevertheless, the Soulbury Constitution, which laid down the terms of decolonization, established the principle of majoritarian rule and a highly centralized political system. It provided few protections for the rights of the minorities: Although section 29 (c) prohibited

legislation discriminating on the basis of religion or participation in any community, no other basic protections or detailed provisions for an independent judiciary were elaborated. 12/

28. The country was initially ruled by the United National Party (UNP) under the leadership of Don Stephen Senanayanake. During his time two significant policies were set in place. The first one was the denial of citizenship to approximately 1 million Indian Tamils; 13/ the second was the opening up of agricultural opportunities for the landless Sinhala peasants in undeveloped areas in the north and east. The immediate consequence of the first was to provide a political advantage for the Sinhalese electorate in the hill country, 14/ and of the second, a process of colonization in lands that the Tamils considered to be "theirs" from ancient times, 15/ which would ultimately alter the demography (and the electoral constituency) of those areas. Both caused deep resentment in the Tamil community and aggravated fears of a majority dictatorship.

29. In 1956 the Sri Lanka Freedom Party (SLFP), led by S.W.R.D. Bandaranaike, won the election with the strong support of Buddhist leaders, by campaigning for the primacy of Sinhalese language, culture and religion. Bandaranaike effectively tapped the resentment of the population against the English-speaking elite and the rising of radical Buddhist monks throughout the 1930s and 1940s, who had vowed by then to overthrow the secular tradition in the country and to participate in its politics.

30. Almost as a means of affirmative action Bandaranaike's Government adopted the "Sinhala only" policy in order to facilitate access of the Sinhalese to public sector employment and university education. For the Tamils this not only was offensive, it also eliminated an important source of income and infringed upon their educational opportunities and advantages; they reacted violently. Following his election, however, Bandaranaike tried to soften the impact of the "Sinhala only" policy. More significantly, he sketched out an arrangement together with a Tamil leader including modifications to the centralized system and a degree of political and cultural autonomy for the minorities. He failed, however, because he lost the support of his electoral base, while the UNP, under the leadership of J.R. Jayewardene, used the occasion to present itself as even more radical.

31. In 1959 Bandaranaike was assassinated by a Buddhist monk and was succeeded immediately by his wife, Sirimavo Bandaranaike. During her time an extensive education campaign was initiated, in the course of which State control over education was extended as a way of reducing Christian influence over schools. Buddhist-Christian relations worsened to the extent that an unsuccessful coup d'état was staged in 1962 by Christian military and police officers. A notable consequence was the elimination of Christians from the security forces, which thereafter largely remained in Sinhalese hands.

32. After a five-year period of UNP rule the SLFP returned to power and two years later, in 1972, it adopted a new Constitution which severed legal links with the United Kingdom. 16/ The Constituent Assembly had rejected the Tamil Party proposal for a federal structure and had dropped section 29 (c) from the Constitution. It had also adopted Sinhala as the one official

language, with the use of Tamil to be determined by statute, and provided for Buddhism the "foremost place" in Sri Lanka. The Tamil Federal Party walked out of the Constituent Assembly, and the UNP voted against the adoption of the Constitution.

33. The constant marginalization of the Tamil community and its politicians and the fact that none of their demands for minority protection were accommodated allegedly led to the creation of the Tamil United Liberation Front, which in a formal resolution issued in May 1976 advocated for the first time a separate Tamil State in Sri Lanka, the Eelam Tamil nation.

34. In 1977 the UNP returned to power with the promise to reform economic and social policy. One of its first measures was the adoption of a new Constitution in 1978, which remains in force today. The new Constitution strengthened the powers of the President; and among other things, it upgraded the status of the Tamil language. Although Tamils supported UNP, they were soon disappointed by what they saw as half-hearted measures of devolving power and of ensuring a degree of cultural autonomy. They were further aggravated by the new administration's pursuit of the Accelerated Mahaweli Project, which was seen by the Tamil community as a further encroachment upon their lands. The Government maintained that these lands were not inhabited and that economic considerations had triggered these irrigation and agriculture schemes. It has been suggested that each side of the controversy holds part of the truth: while such policies cannot be said to violate rights to a "historic homeland", they may well have been inequitable in so far as they further altered the demography of those areas and undermined the economic and political security of the Tamil community.

35. Jayewardene had another serious challenge to face: the rise of a Marxist organization, the Janatha Vimukthi Peramuna (JVP), to which, by 1971, economic failure and severe unemployment had given rise.

36. Violent ethnic conflicts had erupted sporadically since 1948 in Sri Lanka. Following some incidents of violence of 1977, the Jayewardene Government adopted the Prevention of Terrorism Act in 1979 in an effort to contain what by then amounted to civil war. Instead, its unusually broad provisions are said to have increased tensions.

37. The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, in its chapters III and IV, guarantees to the people of that country a number of fundamental human rights, such as the right to equality, freedom of movement and of choosing their place of residence in Sri Lanka and to leave and return to Sri Lanka, and the right not to be subjected to torture or to arbitrary arrest and detention. With regard to derogations, article 15.7 of the Constitution establishes that the exercise and operation of the right to equality and non-discrimination and the freedoms of expression, association, movement and peaceful assembly "shall be subject to such restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health or morality". "Law" includes here "regulation made under the law for the time being relating to public security," i.e. emergency regulations. 17/

38. The Prevention of Terrorism Act (which became permanent law by Act No. 10 of 1982) and the Emergency Regulations, both of which give security forces wide powers (e.g. preventive and incommunicado detention) remain in effect in the whole of the country 18/ and have been (and continue occasionally to be) the source of many abuses, such as extrajudicial killings, disappearances, abuse of detainees and arbitrary arrest and detention. The Working Group on Enforced or Involuntary Disappearances has noted the existence of various law-enforcement forces, such as the army, intelligence units, the police force and various civil defence groups operating under military or police control or acquiescence. Human rights abuses, as expected, have occurred in these circumstances. 19/

D. The armed conflict

1. The first stages

39. By 1983 the elements for an explosive combination were already in place. The armed campaign for an independent Tamil State had become persistent with some Tamil groups by now thoroughly committed to violence, while in response, the Prevention of Terrorism Act provided sweeping powers against anti-State actions. In July of that year, Tamil militants killed 13 soldiers in Jaffna.

40. Widespread internecine strife between Sinhalese and Tamils living in southern areas followed. Extremist elements among Sinhalese nationalists in urban areas attacked the Tamil population and destroyed their properties. The security forces seemed unwilling to act to bring the riots under control. Tamils in the south fled to the north, increasing pressure on resources in that area, including land, water, food and employment opportunities, and reinforcing separatist sentiments.

41. In the same year the Government introduced the Sixth Amendment to the Constitution, together with the infamous Regulation 15A, requiring incoming MPs to swear an oath disavowing separatism. Many moderate Tamil MPs consequently left Parliment, leaving the Tamil opposition in the hands of militant groups. The Liberation Tigers of Tamil Eelam (LTTE) gradually emerged as the dominant guerrilla force and unleashed a cycle of brutal violence against army outposts and Sinhalese, and later also Muslim, civilians.

42. Tamils in greater and greater numbers began to perceive the Government as the enemy; conversely, many in the Government and the army started to believe that the only way of reestablishing peace was to "solve" the "terrorist" problem.

2. The role of India

43. In 1987, after the Sri Lankan forces had called a halt to an offensive on Jaffna, the Governments of India and Sri Lanka signed an agreement (the so-called Indo-Lanka Accord) which provided for concerted political and military action with a view to putting an end to the conflict in the north. 20/ The Accord accorded some concessions to the Tamils and it declared that Tamil and English would also be official languages. It also provided for a scheme for devolving administrative powers to the northern

and eastern provinces. The Accord called for the temporary union of the two provinces for one year, after which the inhabitants of the eastern province might (at the discretion of the President) decide in a referendum whether they should form a separate administrative unit.

44. As a result of the Indo-Lanka Accord, the Indian Peace-keeping forces (IPKF) landed in Sri Lanka with the mandate not only to disarm the Tamil militants, but also to maintain law and order in the north and north-east. Some Tamil militants went along with the accord. The LTTE did not, and was soon fighting the IPKF and acting against other Tamil militants, who then joined in to try to defeat the LTTE. The IPKF failed to subdue the LTTE, and its actions in trying to do so led to accusations of widespread human rights abuses. 21/

3. Political terrorism

45. More ominously, many among the Sinhalese came to regard India's role as a dangerous threat to Sri Lankan sovereignty. The JVP acquired popular support at this time by exploiting nationalist sentiments and the growing disenchantment over serious socio-economic problems. The JVP had started as a non-violent political movement in the early 1970s, seeking to participate in the established democratic system. It was ruthlessly suppressed then and outlawed in 1983, but it regrouped and resorted to extreme violence. In early 1988 it launched a campaign of murder against members and activists of the ruling United National Party (UNP) and government employees. In retaliation, paramilitary vigilante groups, possibly connected with the armed forces, engaged in "exemplary killings" and other atrocities. In July 1989 there was an escalation of the fight, as JVP appeared to make a final thrust towards capturing State power. The State launched a general counter-insurgency campaign and by the end of November 1989, the armed forces put down the revolt, when they succeeded in arresting and executing the nucleus of the JVP leadership.

46. Following a relatively peaceful period of one and a half years in the South, 1992 witnessed increased levels of political violence perpetrated both by pro-Government and anti-Government elements. Violence or threats of violence have been directed against participants in political rallies or demonstrations of one kind or another, against members of the academic world, the media, the legal profession, human rights groups and Buddhist priests. Some of these actions are explained as marking a resurgence of the JVP.

4. Peace initiatives and failures

47. President Premadasa, who came to power in December 1988, had always opposed the Indo-Lanka Accord and the presence of foreign troops on Sri Lankan soil. In April 1989, the President undertook negotiations with the LTTE, resulting in a mutual cease-fire, while the LTTE continued fighting the IPKF. It was said at the time that the Sri Lankan Government actually supplied arms to the LTTE in order to expedite the withdrawal of the IPKF. In September that year, the Indian Government agreed to pull out its troops. They eventually left the country in March 1990. A few arms were turned in by Tamils to the Indians, while the rest may have been used later in opposition activity.

48. The north remained relatively peaceful during most of 1989 and 1990, while the army was being occupied by the JVP insurgence. In mid-1990, however, heavy fratricidal fighting was reported between the LTTE and the Tamil National Army (TNA), a combat unit forcibly recruited by Tamil factions with the help of the Indian forces. Hundreds of persons were reported killed and thousands of Tamils fled to India and other countries. The LTTE took effective control in the north and east after the retreat of the Indian army. In June 1990, the LTTE, breaking a 14-month cease-fire, attacked police stations and army camps and killed a number of soldiers before retreating into the jungle. The army retaliated ferociously, allegedly against mostly unarmed Tamil civilians. Local Muslims, angered by the killing of Muslim policemen, sometimes accompanied soldiers, pointing out Tamils. The death and destruction of the summer of 1990 were referred to in many discussions the Representative had with the local population in the east. Displaced persons living in camps were among the most frequent victims: if they were not killed or "disappeared" they would often be displaced yet again.

49. In September 1990, an all-party conference was convened on the issue of devolution of power in the north and east with the intention of resolving the ethnic conflict. After much negotiation, the conference failed to reach agreement between the Tamil and Muslim groups regarding equal status and power as well as the merging of the two provinces. The Muslims are said to fear the merger, in which case they would become the clear minority in that area.

5. The victims

50. Despite President Premadasa's efforts, throughout his term, to promote consultations and negotiations as a solution to the ethnic conflict, the violence continued unabated in the north. It is estimated that between June and September 1990 more than 1 million people were displaced by the fighting in the north-east. As of January 1991, over 210,000 people had fled to southern India and more than 5,400 had been killed. In August 1991 the army carried out Operation Balavegaya, with the entry of troops into the besieged Elephant Pass army camp. Since then the Jaffna peninsula, the traditional LTTE stronghold, has been cut off from the rest of the island. The army has maintained camps around the Jaffna peninsula, which it intermittently bombed and shelled during 1992. Approximately 80,000 persons have been caught in the ongoing fighting and, as a consequence, have left their homes and have moved in with friends and relatives or into camps. Living conditions in the peninsula have been described as pre-industrial. The LTTE is allegedly requiring civilians who want to leave the area to purchase passes and hinders the movement of those trying to flee or reach safer areas and the transportation of relief aid.

51. During 1992 and 1993, with the intensity of violence between the Sri Lankan armed forces and the LTTE continuing, attacks by the LTTE, as well as reprisals by the military have victimized hundreds of the civilian population, including children and elderly people. Muslim communities are the ones mostly targeted. They have been expelled from their homes in the north, while in the east they have often been caught in the crossfire between the army and the rebels. The army forces had armed and trained groups known as Muslim Home Guards, which act as civil defence units in the Muslim villages. This "cooperation" has provoked retaliatory action by the Tamil insurgents

against Muslim villagers and the Home Guards; but the Home Guards have also been accused of engaging in arbitrary violence and human rights violations. The east (Trincomalee, Batticaloa and Ampara) appear as if it is gradually being pacified, as the army is regaining control of the region, but the situation in the north remains largely unchanged.

II. THE MISSION AND ITS FINDINGS

52. This section summarizes the field visits of the Representative and his observations with regard to the living conditions of the displaced, the general security situation, the issue of resettlement, the role of the international community and the hopes for achieving durable solutions for the problem of internal displacement.

A. Areas visited

53. As mentioned in the Introduction, the Representative went to welfare centres and camps where the internally displaced are housed, as well as resettlement sites, where those who had been displaced have returned. In the district of Puttalam, in the west, he visited Sinhapura, the one Sinhalese camp in the area, and a few Muslim camps in Alankuda and Kalpitiya. In the district of Anuradhapurha he visited Thanthirimale, a so-called "border" Sinhalese area, a Sinhalese camp (including one Muslim family) in Kahatagasdigiliya and a few Muslim and Sinhalese camps in Morawewa and Horowpotana. In the eastern district of Trincomalee the Representative visited Alles Gardens, where UNHCR is currently hosting returnees from India, Nilaveli and Clapendburg camps housing Tamil displaced persons, Alankany village (in the division of Kinniya) where Tamils have resettled and one Muslim camp, also in Kinniya. In the district of Ampara he went to a Tamil resettlement village, Sorikalmunai, and a Tamil "transit" camp (i.e. where people are housed pending resettlement to their villages) in Karativu. In Batticaloa, he visited Thalavai, a Tamil resettlement village, and two camps, one Tamil and one Muslim, in Erravur. Finally, while in Colombo, the Representative visited Maligawatte welfare centre, housing Muslim and Saraswathy Hall housing Tamil displaced persons.

B. Conditions of the displaced

54. Internally displaced persons in Sri Lanka are either housed in so-called welfare centres (or camps), or outside such centres if they can find private accommodation, for instance, with friends or relatives. The conditions of the displaced as observed by the Representative are described in this section under food, housing, sanitation, health, education, employment and administration of relief assistance, with concluding comments.

1. Food

55. The most important role that the Government has assumed vis-à-vis the internally displaced is the provision of food. Most displaced persons receive coupons which entitle them to draw dry rations from the local State cooperative shop, which they cook individually. People living outside welfare centres obtain their coupons from the local officials (the Additional Government Agents). Except for certain districts being supported by the

World Food Programme (such as the Muslim camps in Kalpitiya), the bulk of the expenditure on dry rations is being borne by the Government. 22/ The Government provides dry rations indiscriminately to the whole affected population on the island. In LTTE-controlled areas the food is transported with the assistance of the International Committee of the Red Cross and is then distributed by the Government Agents in cooperation with international and local agencies and the LTTE. The Government has been repeatedly complimented for assuming this huge financial burden and for not discarding its responsibilities, especially with regard to the Tamil population, despite criticisms that some of this assistance trickles to the rebels. 23/ Whether it does so out of a genuine sense of duty or, as some have said, in order not to alienate the Tamil population entirely, is beside the point. Even more striking are the pragmatic arrangements between the Government and the rebel forces, which de facto amount to a form of devolution of administrative power, in the midst of the armed conflict.

56. Some of the displaced voiced complaints about the inadequate nutritional value of the dry rations; many NGOs also suggested that although there is no food security crisis, this type of nutrition, when not supplemented by other means, is low in proteins and vitamins. The most serious problems are said to exist in Jaffna where the blockage of the Elephant Passes and the lagoon has resulted in prices of goods generally remaining high, despite the Government's provision of food for sale at controlled rates.

2. Housing

57. With regard to housing, most centres consist of huts covered with cadjans (coconut thatch for temporary roofing), built with varying degrees of stability. In some cases, as in the camp in Kahatagasdigiliya, the walls were solid and the floor cemented and, were it not for the cadjan roofing, they would look rather like houses. In other cases, as in Nilaveli camp, the huts would be built right on the sand, near or on the beach. Most huts consist of one room where whole families live. There is no electricity in most cases, which means that people cook in the huts with firewood and use kerosine lamps. The danger of the cadjans catching fire is self-evident; in Alankuda the Representative was told that once the camp had been burnt to the ground. Another typical complaint was that during the monsoon season cadjans would leak or that whole camps would be flooded.

58. Some camps were particularly overcrowded and congested, especially when the people would be housed in pre-existing buildings used for different purposes (for instance, Clapenburg, which used to be a supply depot for the British during the Second World War and Saraswathy, an ex-theatre in Colombo). Where this was the case, people had made partitions either with their belongings (cartons, trunks, etc.) or with pieces of cloth. In Clapenburg and the two camps in Colombo overcrowding compounded with the total lack of privacy were considered to create serious psycho-social problems.

59. In resettlement villages the huts look the same although they are more spread out. People have often built cadjan huts right next to the ruins of their old homes. The Government and international and local NGOs have provided as emergency assistance the cadjans for the roofing, or have assisted in putting up the welfare centres and the huts.

3. Sanitation

60. Sanitation was described as more problematic. Inadequate facilities and scarcity of drinking water were among the commonest complaints in most camps. The Representative was told, for instance, that in one transit camp in Navalady (in Batticaloa) there was no drinking water at all when the first group of persons to be resettled arrived last June. When the Representative inquired, the Coordinating Officer (the Brigadier) told him that soon afterwards a well had been built. The same person also mentioned that in any event the camp was no longer being used. This was confirmed by some NGOs. In one of the centres in Colombo there was only one toilet available for all the women. In Nilaveli there were no latrines at all. Health problems such as respiratory tract infections, scabies and fungal infections, worsening cases of anaemia, chronic malnutrition, and mental health problems associated with traumatic experiences were also mentioned.

4. Health

61. Health facilities appeared to be generally available. The area where medical supplies are not always readily available is, not surprisingly, the Jaffna peninsula. As the areas under LTTE control are under partial economic blockade, items such as drugs, all fuel and lubricants apart from kerosene, etc. are under strict controls. Drugs are supplied to the government hospitals, with the exception of strong painkillers, anaesthetics and antibiotics. Some persons voiced serious concerns in view of the fact that in order to gain access to the State-run medical facilities they have to pass through army check-points. Some NGOs told the Representative that they have also been restricted for security reasons in gaining access to certain areas where there are internally displaced persons, for instance in Mutur (in the district of Trincomalee) or in Kilinochchi.

5. Education

62. The Representative was impressed with the numbers of schools and of the children attending them in the areas he visited, which illustrated the strong education tradition of the country. Nevertheless, some parents complained that they had no money for uniforms and books and although the Ministry of Education has issued a circular whereby displaced children are not required to wear uniforms, discriminatory practices on the level of each school have not been avoided. In Talavai (in Batticaloa district) it was not very clear whether teachers were coming at all to teach, due to lack of means of public transportation.

6. Employment

63. Most grievances expressed revolved around the question of employment. While some displaced persons could find work in rice paddies (notably in Ampara) or in onion cultivations (in Kalpitiya), most complained of the general lack of employment opportunities. Lack of any occupation has meant not only inability to supplement the dry rations, but also a break-up in the traditional social roles, especially of the men. In some cases the displaced said that the local population was not welcoming their presence in

the local labour market. Others said that they were not given any land to cultivate, although they felt that such land was available nearby or in other areas where they would be happy to resettle. The question of lack of land was a recurrent theme in the discussions the Representative had with many of the displaced in all the areas he visited, as some of the displaced said they would like to settle in the area they had moved to.

64. In addition to labouring jobs, the displaced are also eager to start self-help projects and often expressed the hope that the State or an NGO would make the necessary arrangements. For many single-parent families (overwhelmingly headed by women) lack of income is a serious problem: women whose husbands have either died or disappeared have serious difficulties raising their children while at the same time being the bread-winner of their families. Many said that without knowing whether their husbands were dead or not they could not even remarry. Government officials acknowledged that the problems of women and children (especially widows and orphans) were daunting, but expressed the hope that the NGOs would help address them. Another problem raised was that of complicated administrative procedures with which women of little education or those not experienced in dealing with officials had difficulty complying with. Government policies with regard to these target groups, if they exist, did not seem to be effectively implemented at the local level.

7. Administration of the relief assistance

65. The basic approach of the Government seems to be to carry out the great majority of its own relief operations through its regular administrative structures. The civilian authorities are responsible for the provision of relief aid by the Government itself and the coordination of the overall relief effort. For instance, the purchase of the food rations is financed at the central Government level; then the food rations are transported through a complex system of private transport and assistance by ICRC and NGOs. They are then distributed at the local level, mostly through the government cooperative infrastructure under the supervision of the Government Agent (at the district level), Additional Government Agents (at the division level) and others designated by them. The Government is also responsible for the provision of essential services in the affected areas. The provision of relief supplies and other assistance differs somewhat between the north and the east. The main relief problem for the north seems to be moving relief supplies from the southern areas to the main centres in the north, not their local distribution. This contrasts with the situation in the east, where reaching the main centres is not as difficult, but local distribution is more difficult. The assistance of UNHCR, ICRC and NGOs is instrumental in both instances.

66. The military and the army have considerable say over how goods are provided. At the national level the Operational Headquarters at the Ministry of Defense is meant to set policies for what kinds of relief can be provided and transported to where, and to set up the procedures for clearing transport of relief. In practice, it appears that the local commanders have a great deal of de facto discretionary power over what relief can actually be provided.

8. Concluding remarks

67. On the whole there is a general positive assessment regarding the Government's response to the problem of internally displaced persons. The Government has assumed full responsibility for its displaced and returnee population and works closely with international agencies and organizations. Relief assistance is considered to reach most groups satisfactorily. Sri Lanka presents the unusual situation of a central Government providing relief aid to persons under the control of the main opposition group. In a world replete with examples of Governments and rebel groups using food as a weapon against civilian populations, the situation in Sri Lanka is one that deserves closer attention if not more publicity as an important precedent.

68. Because of lack of adequate resources, however, compounded by a tacit policy not to encourage settlement in the camps, the Government's support to the displaced is limited and leaves a lot to be desired. Lack of cash at the Treasury is a serious constraint with immediate repercussions for the displaced. On the other hand, there have also been occasional allegations about corruption, namely, that much of the assistance to be directed to the displaced and the affected gets lost on the way, and waste of resources.

C. The general security situation

1. Conditions on the ground

69. Security conditions in Sri Lanka vary considerably from area to area. In a few places it appears that people have reverted to their normal, peaceful lives. In Colombo, the capital, one can hardly remember that there is a war going on in the north. Nevertheless, the violence and the related atrocities (such as arbitrary executions, arbitrary detentions, disappearances, rapes, harassment, mistreatment of prisoners and civilians, etc. recorded in the past by groups in and outside Sri Lanka) seem to have been imprinted on the memories of the people who have survived them. This affects profoundly the way they perceive their future.

70. Another point to bear in mind is that the conflict is so volatile that conditions of security can change fast. For instance, many areas in the east are gradually being pacified, or "cleared", in the terminology of the Government. In the urban centres (the town of Trincomalee for instance) life is in full swing. In Anuradhapurha people walk in the streets well after dark seemingly without any fear. Yet it was considered necessary for the Representative to be accompanied by a heavily armed escort in the east, which was not the case in Puttalam or in Colombo. A senior army commander in the east said that the army had fought its way step by step in the district of Batticaloa and that the rebels were now confined in the jungles in the interior. The Government Agent in Trincomalee said that three areas in his district had not been "cleared" yet. People resettled in Alankany (in Trincomalee) could not go to cultivate their fields a few miles away, because the area was not yet "clear".

71. These are results of the LTTE's low-intensity, guerilla-style war in the east, mainly in rural areas. After dark much of the countryside is allegedly at their mercy, with killings of soldiers in outposts not uncommon. Army officials and NGOs told the Representative that the LTTE are continuing to recruit among the local population, although opinions differed as to the scale and voluntary nature of the recruitment. Nevertheless, it was not disputed that there are instances of LTTE infiltration. The local population may also be asked to provide other types of assistance to the rebels, risking retaliatory activities if it does not comply with such requests. The Muslim community tends to feel particularly threatened in these cases. Compliance with LTTE requests puts civilians at risk of being seen as sympathizers by the security forces who take action accordingly.

72. The LTTE remains in control of a large part of the north. Despite hopes on the part of the army to win the war quickly or to at least contain the rebels in increasingly restricted areas, the movement seems not to have lost its strength. During the Representative's visit a major LTTE offensive against an important military base in the north was unexpectedly and successfully carried out, which deprived him of the opportunity to travel to Killinochchi as he had originally planned.

73. There is a heavy military or police presence near or around many camps and resettlement villages, especially in border areas or disputed territories. One such case was Thanthirimale in Anuradhapurha, where the Representative was told that the people go during the day to cultivate their lands north of the centre and at night return to the centre, which is next to a Buddhist shrine and an army camp, because they feel safer there. Thanthirimale is a so-called Sinhalese "border area"; the war front is a few miles to the north. The practice of settling people near or around army camps is, according to the authorities to protect them. Allegations that the army is using some such villages as "human shields", have risen, as in some cases the civilians surround the army camp rather than vice versa.

74. Also present in some camps and resettlement villages are paramilitary units such as Muslim Home Guards or other volunteer forces and Tamil paramilitary groups opposed to the LTTE (Peoples' Liberation Organization of Tamil Eelam or PLOTE, Tamil Eelam Liberation Organization or TELO, or EPDP). In the past they have been accused of committing serious human rights abuses.

75. Lately, both these groups, wherever still present, and the armed forces have been making an effort to "win the hearts and minds" of the people: government and military officials repeatedly said that efforts are being made to restrain abusive behaviour by the soldiers and the policemen and to educate the army on the laws of war. They did acknowledge that the rapid expansion of the army in the past few years had resulted in a gap in their education. One minister said that, wherever possible, security responsibilities were transferred from the army to the police (where people from the local population are employed). In his talks with the displaced, the Representative did not hear any serious allegations contesting this, although the relations with the army or the police were said to depend heavily on the personal disposition of their local leaders. For instance, in Sorikalmunai the people

expressed gratitude for the fact that the second-in-command of the Special Task Forces (the branch of the police mostly in control in Ampara) was much more benevolent than the previous one.

76. As expected, those who feel more vulnerable with the tight security around the camps are potential suspects. A serious grievance expressed by many displaced persons was having to go through the numerous check-points on the roads, where they are subjected to questioning and thorough checks. If on a bicycle, they have to get off and walk through; if in a car or bus, they have to step out. If they are women, female army officers have not always been present to check them (although this is being increasingly rectified). While these procedures obviously affect the daily lives of everyone, for some they may imply serious threats. This would be the case for people belonging to suspect categories, for instance, young Tamil men. Others may have lost their identity cards (not uncommon among persons displaced in a hurry), in which case they have to provide alternative explanations for their presence. Army officials have responded that the people will have to become "security-conscious", as one brigadier phrased it, as the security reasons for retaining the check-points are compelling. The local people would have to learn to go on with their normal lives while the army continues its operations.

77. In some places, for instance in Talavai and in Erravur, people spoke of round-ups, beatings and detentions. In Sorikalmunai the women recalled "visits" by "men in uniforms" who would come and "take" them. Others spoke more explicitly of incidents of rape. The men said they had sometimes been taken to do work in the Special Task Forces (STF) camp; that some of them had to report regularly to the police; that after 6 p.m. they could not stay outside the village; and that they had not always been able to protect the women.

78. The general impression is that in the last few months things have undoubtedly improved and instances such as the above have decreased in frequency. The relationships between the security forces and the local population and between the communities themselves remain very tense, however, as hostile feelings and bitter memories of the 10-year-long conflict and violence have fermented.

2. Relevant international legal standards

79. Sri Lanka is a party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and is, therefore, bound by its provisions. Article 3 of the Convention 24/ (common to the four Geneva Conventions and applicable to situations of internal armed conflict) provides for minimum standards of protection to civilians.

80. Sri Lanka has not, however, signed Protocol II Additional to the Geneva Conventions of 1949, relating to the victims of non-international armed conflicts. The Protocol develops and supplements Article 3 of the Fourth Geneva Convention. The Working Group on Enforced or Involuntary Disappearances recommended in the report of its second visit to Sri Lanka (E/CN.4/1993/25/Add.1, para. 146 (d)) that the Government should consider becoming a party to Protocol II Additional to the Geneva Conventions.

Senior officials attributed the reluctance of the Government to do so to the fear that it would imply a "recognition" of the rebel force, despite the guarantees to the opposite provided in article 3 of the Additional Protocol.

81. Sri Lanka has signed the International Covenant on Civil and Political Rights (recognizing the competence of the Human Rights Committee under article 41 of the Covenant) and the International Covenant on Economic, Social and Cultural Rights. It is also a party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and other international instruments of lesser relevance to the protection of internally displaced persons.

82. However, Sri Lanka is not a party to the two Optional Protocols to the International Covenant on Civil and Political Rights, the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons and the Convention and the Protocol relating to the Status of Refugees.

83. Although Sri Lanka is a member of the International Labour Organisation, it has not signed Conventions Nos. 107 (of 1957) and 169 (of 1989), certain provisions of which relate to displacement of indigenous and tribal populations.

D. The question of resettlement

84. Issues pertaining to resettlement touch on the role of the specialized authorities, local attitudes toward resettlement, the dilemmas which the authorities face in implementing the policies and the guidelines which the Government has recently adopted for resettlement.

1. The role of the authorities

85. During the last year the Government has embarked on an ambitious resettlement and rehabilitation project, essentially consisting of the "repatriation" of displaced persons back to their original places of residence, when these areas are "clear". As central and local government authorities explained, the military "clears" an area and then declares it safe, which gives the green light to the civilian authorities to go ahead with their resettlement projects. In some cases families will be transferred from their camp to a "transit" camp where under normal circumstances they stay for a few days until their transportation to their original area of residence can be arranged. When a family "resettles" in their area of origin, the Government has undertaken to provide, inter alia, a "settling-in allowance" of Rs. 2,000 and an amount of Rs. 15,000 for housing construction. The Government also provides three months' dry rations to those who choose to return to their communities, extendable to six months in exceptional circumstances. Within the civil administration the focal point for the implementation of the resettlement and rehabilitation programme is the Ministry of Reconstruction, Rehabilitation and Social Welfare (MRR&SW).

86. The military plays a large role with respect to resettlement. Apart from "clearing" the area, it has to ensure security thereafter. It was the impression of the Representative that the extent of the military's involvement depended on the security situation in a given area. In some cases it seems that the army is the driving force in the implementation of the resettlement policies of the Government.

2. Attitudes toward resettlement

87. Whenever asked by the Representative, government and military officials repeatedly stressed that resettlement was always voluntary and that no one was forced to return to his or her home area. Officials also said that the displaced from Vavuniya, who were being sheltered in LTTE-held areas, wanted to go back to their villages but the LTTE would not allow them to do so.

88. Some of the displaced, when asked, expressed a clear reluctance to return to their areas. In Clapenburg some said that it was not safe to go back; that in the camps they were closer together and, therefore, felt more secure. They also said that now their fields were being occupied by the Muslims and so "there was nothing for them back there". In Erravur one woman said she could not set eyes again on the house where her husband had been slain. In Morawewa a woman who had been living in Kuchchuveli (her original village in north Trincomalee) reported that gunfire was continuing there and that many of those who had returned there were feeling unsafe. In Nilaveli people reported that young men would not be safe if they returned to their villages. Displaced Muslims said that they wanted Tamil villages to be established between them and the LTTE before they would decide to go back. In a Tamil camp in Ampara women said that they would be too insecure to return to their villages without their sons and husbands. They also said they could not consider returning if the security situation was not considerably improved. In Saraswathy (Colombo) people reported that relatives who had returned to Batticaloa were being harassed at check-points and that they would consider returning to Batticaloa only if conditions improved.

89. In one Muslim transit camp in Erravur the Special Task Forces had brought those to be resettled 1½ months earlier. They declined to go back to their village in Urugammum because the LTTE had looted their houses and burnt their land and were still present there. They did not feel particularly secure in the transit camp either - they felt that anything could happen at any time between themselves and the Tamil communities nearby. The conditions in one transit camp in Batticaloa, where Tamils who had been housed in welfare centres in Colombo had been transported beginning June 1993, were heavily criticized by NGOs. This camp was not in use during the visit of the Representative.

90. In Alankany some of those who had already been resettled said that conditions were so awful in Clapenburg that they preferred to be back in their village although they still lived in cadjan huts and they could not go to cultivate the fields for security reasons. In Sorikalmunai they said they had been brought back by the Special Task Forces a year ago; at the time they were not very happy about it but "felt they had to come back". In many camps people mentioned that the authorities had told them that the rations would be cut after December 1993, because they could now return to their homes. The

brigadiers had also visited the camps and had tried to convince the displaced that their home areas were now safe. Some people said the appearance of the brigadiers was not particularly reassuring; others said they could not trust the officers of the army who had attacked them in the past and killed their relatives.

91. A consistent grievance was that the authorities were not providing the financial assistance they had promised. While dry rations were being supplied to the resettled, the settling-in allowance, and the funds for reconstructing houses and the productive enterprise grants were frequently not forthcoming. In Trincomalee, for instance, the status report for this district records that of the 32,062 families comprising the case-load eligible for settling-in allowance, 21,627 were still to receive this amount. Also, the Rs. 15,000 granted as housing assistance to the poorest families was considered to be much lower than the real cost of reconstructing a house (roughly estimated to be around Rs. 30,000).

92. NGOs reported that resettlement was not always voluntary and that occasionally it had been conducted under harsh conditions; that it was taking place despite the fact that there was no end to the conflict in sight and that coercion could take subtle forms. They expressed concern for the fact that the Government's own guidelines (discussed below) were not always being complied with.

93. On the other hand, there were many displaced persons who expressed their wish to return to their areas of origin once they received some financial assistance. Of those who had already been resettled, many said that conditions were better in their own village than in the camp and that although they had originally been reluctant to return they were now happier than before. Also, many NGOs have agreed to assist only those who return voluntarily to their homes and are now involved in providing rehabilitation assistance to the resettled. Their presence has undoubtedly had a moderating and monitoring effect both on the authorities and on the local population, which the Government acknowledges. While recognizing that the Government naturally perceives the fulfilment of basic needs as its first priority, many NGOs expressed concern at the lack of realistic and detailed long-term plans.

3. The dilemmas of implementation

94. There is no doubt that the Government is faced with some serious dilemmas in this whole process. Officials appreciate the fact that assistance with resettlement and rehabilitation at present means saving expenses for dry rations in the future. They also believe that people cannot stay forever in the camps. When the majority of a camp decides that they want to return to their villages and a minority refuses, the officials feel that there is no good reason for maintaining the camp and for continuing to supply food assistance. Officials also expressed the suspicion that some of those housed in welfare centres had developed a dependency syndrome or found it lucrative, particularly if living in Colombo, because they got the rations while also working outside the camp. One senior army official even thought that some relief NGOs were "living off" the displaced and preferred the perpetual existence of the camps. NGOs, on the other hand, feel that conditions in the camps are too bad to allow for the development of dependency syndromes.

95. Some officials expressed that it was often hard to find out who was from which area and that the tensions between the communities were complicating the task of allocation of land. It is also not contested that an amount of propaganda is in play: in Maddhu Open Relief Centre, for instance, where UNHCR was distributing the food, the displaced, on LTTE admonitions, staged demonstrations, because the Government stopped distributing rations to those originating from "cleared" areas in Vavuniya. The LTTE has discouraged, if not actually prohibited, those contemplating to return from doing so. On the other hand, maybe the Government is placing too much emphasis on persuading the first ones to resettle on the premise that while the first step is always the most difficult the next will fall naturally in place.

96. The most serious problem, as the authorities see it, is the lack of funds which does not allow the Government to fulfil its promises to the resettled and threatens to undermine its efforts to date. Lack of funds accounts for the fact that specialized projects or projects directed towards target groups were hard to design and implement. Both government and military officials said that without building the infrastructure, especially schools, medical facilities and employment opportunities, people could not be expected to return to their homes.

97. As regards the question of ascertaining the voluntary nature of the return, the officials' responses were not very comprehensive: they either said that the people themselves would express their will to be resettled, or that the authorities managed to convince them by providing the necessary information. On the question of how safe an area needs to be in order to be declared as "clear" or how permanently "clear" it has to be before resettlement begins, some officials said that the potential for violence could not be excluded altogether in any area.

98. In addition, there appear to be regional patterns to the whole issue of resettlement. The Government is actively promoting at this time the resettlement of the displaced in the east and in Vavuniya (in the north). It had declared the ambition to accomplish this resettlement before the end of 1993 so that it could hold local elections for the provincial councils early in 1994. Also, in the east it was planning to conduct a referendum, provided for in the Indo-Lanka Accord of 1987, on the issue of the "merger" between the east and the north. NGOs and other sources privately expressed serious doubts as to the feasibility (and fairness, should they take place at that time) of the elections and the referendum. They have also voiced concerns regarding the genuineness of heightened efforts to "normalize" the area. MRR&SW officials and military authorities said that their job was to implement the government policy as fast and efficiently as possible.

99. In the light of the complicated issue of settlement of landless Sinhalese farmers in the past, resettlement of the local population in the east for the purpose of voting had become a highly politicized issue. Reports alleged that Tamils were not being resettled as quickly as Muslims and that they had not received equal assistance from the Government. Some individuals expressed the fear that the LTTE were going to do anything possible to jeopardize the referendum (not excluding, of course, violence). This "resettlement by date" rendered the prospects of maintaining peace for those already resettled rather precarious.

4. The Resettlement Guidelines

100. The MRR&SW had adopted a few months earlier a set of Guidelines for Resettlement of Displaced Persons which emphasize that:

> "... resettlement should not be understood only as moving the displaced population to their original places of residence. It is a process of moving the displaced population to their original places of residence, creating a congenial environment to live without fear and providing the necessary social and economic infrastructure for the resettlers to recommence their normal lives with confidence."

101. They go on to outline what steps need to be taken before and during the process of resettlement. The first such step is that "the area earmarked for resettlement should be declared by civil and security authorities as [a] secure and safe area for the people to live and undertake normal economic activities." The second step is that "the resettlers should be convinced that the area is secure for resettlement and to recommence their normal life. If the people do not feel secure, they may be unwilling to resettle, to invest time and money in rebuilding and restarting their economic and social life."

102. The Guidelines provide for the full cooperation of the relevant authorities in informing the people of their opportunities to resettle and for the appointment of committees consisting of the local authorities, the NGOs, the clergy and leaders of the village and adjoining villages who should visit the area of resettlement and report back to those to be resettled.

103. The Guidelines set some laudable standards with regard to the process of resettlement. Despite the fact that they are not particularly explicit about the absolute requirement to safeguard the voluntary nature of the resettlement nor do they provide for procedural guarantees for doing so, they do contain the basic principles deriving from international human rights norms: for instance, the freedom of movement, the right to personal security, the right to food, employment and adequate housing.

E. The international and the non-governmental community

104. Generally, there is much activity regarding Sri Lanka on the international level; this, however, has remained low-key and geared mostly towards humanitarian and development assistance, at least as far as internally displaced persons are concerned. United Nations agencies and international and local NGOs have also provided housing and related assistance to displaced persons. Much donor assistance is channelled to the displaced through the NGOs, which comprise a well-established community. Among the international actors involved in activities relevant to the internally displaced are UNHCR, UNICEF, ICRC, NGOs and the donor community. After reviewing the roles of these actors, this section underscores the importance of addressing the root causes of internal displacement through conflict resolution.

1. The role of UNHCR

105. UNHCR is involved with the process of repatriation of refugees and to that extent deals also with internally displaced persons. It has an open dialogue with both the Government and the LTTE and is the most substantive United Nations operation in the north and the east. It has established two so-called open relief centres (ORCs) and several subcentres, the history of which is connected with the Tamil movements between Sri Lanka and India. In the period from 1983 to 1987 many Tamils fled conditions of insecurity in the north and east and sought asylum in India. Following the Indo-Lanka Accord of July 1987, many were encouraged to return home; UNHCR and the Government of Sri Lanka signed a Memorandum of Understanding in August 1987 regarding UNHCR's monitoring of its assistance for the rehabilitation and reintegration of returnees. Following the resumption of hostilities in June 1990, a large number of persons crossed the Palk Strait to seek refuge in South India, while a much larger number fled their homes for other destinations. Mannar district (mainland) was the home area of the largest number of returnees and thus had become the focal point of the UNHCR-assisted reintegration programme. At the same time, Mannar provided the shortest, safest and cheapest crossing to India, thus attracting most of the persons fleeing the conflict. UNHCR found itself, perhaps for the first time in its history, with a field presence in a country of origin amidst a mass exodus. The need to help those of concern to UNHCR (the returnees) went hand in hand with the opportunity to defuse somewhat the causes for departure. It was also assumed that UNHCR would be in a better position to promote conditions for the spontaneous voluntary repatriation of refugees from Tamil Nadu. But most compelling was the fact that it was impossible to draw a legal distinction between categories of persons with respect to entitlement to basic humanitarian assistance.

106. It was against the backdrop of these considerations that UNHCR decided to establish its ORCs. These have been defined as temporary places where displaced persons on the move can freely enter or leave and obtain essential relief assistance in a relatively safe environment. They were neither closed camps, nor Government welfare centres, nor de jure "safe havens".

107. There are two ORCs in Mannar district: one at Pesalai, a fishing village on the northern coast of Mannar Island which is under the control of the Sri Lankan armed forces, and one at the Madhu shrine, deep in the forests of Mannar mainland, an area largely dominated by LTTE militant forces. The presence of UNHCR field staff at the ORCs provides the opportunity to monitor the situation and to show that some effort is being made to ensure that international standards are being observed. It can also be said that the UNHCR presence is a restraining influence on the action of the combatant parties.

108. The basis of UNHCR's involvement with internally displaced persons in Sri Lanka was the authorization of the Secretary-General for the extension of its humanitarian expertise to displaced persons. UNHCR and the Government have signed memorandums of understanding which provide the terms of reference for the assistance and protection provided by UNHCR. The ORCs have attracted funding by donors.

109. Several problems have been encountered in the operation of the ORCs. One is that UNHCR has never obtained formally the consent for their establishment from one of the combatant parties; this is now threatening to undermine the whole operation in Madhu, as the LTTE are decreasingly prepared to accept that Madhu is supposed to remain a zone of tranquillity. Another is that a phasing out of the ORC programme does not seem feasible as the need for it exists unabated and there is no agency prepared or able to take over from UNHCR.

110. UNHCR, in close cooperation with the Government, has also been establishing transit and reception centres on Mannar Island, in Trincomalee and in Vavuniya and the Representative had the opportunity to visit Alles Gardens (in Trincomalee). UNHCR implements micro-projects in the sites where the returnees eventually resettle and monitors to some extent their fate.

111. Some sources have been critical of UNHCR's involvement in the repatriation/return exercise, which they see as sending a false signal to Governments with large Sri Lankan refugee populations, and they have welcomed the cautious approach with regard to the return programme from India. They have stressed the need for UNHCR and NGOs to gain access to the camps hosting returnees and for the refugees to be provided with valid and accurate information about the situation in their home areas.

112. Another point that has not been generally clarified is the extent to which UNHCR can protect non-refugee groups. This is the case for internally displaced persons and for non-refugee returnees (such as persons deported from Western countries who have not been recognized as refugees there). The pragmatic answer has tended to be that UNHCR has a mandate to protect all those persons who are "of concern" to it in one way or another.

113. UNHCR does not have a presence in the rest of the country and does not extend its protection and assistance activities to any other area or group outside the north. Despite the beneficial effects that the UNHCR presence has, many observers deem that an extension of its operations to the rest of the country would considerably undermine what it is already doing.

2. The role of UNDP

114. UNDP resident representatives also have an important role with regard to humanitarian assistance, including assistance to internally displaced persons (mandated by General Assembly resolution 44/136 of 1989), in their capacity as resident coordinators. As such they have quite a different role from their usual function of providing technical assistance to the Government for development purposes. Their functions become more independent, with direct responsibilities to the Secretary-General's office, the Department for Humanitarian Affairs (DHA), the national Government and major donors, as much as to UNDP headquarters.

115. A number of obstacles exist to the initiation of an active resident coordinator function in a case like Sri Lanka although there is a general consensus that humanitarian relief and development assistance programmes must be comprehensive. Some government officials would see this as a public declaration that the Government is not able to adequately handle the relief situation. Many of the staff of the various United Nations agencies, the

International Committee of the Red Cross (ICRC) and NGOs prefer their degree of autonomy. Furthermore, UNDP would have difficulties establishing its credibility as a leading relief player, given its lack of any operational programmes of this type in Sri Lanka and of the relevant expertise. The situation is more complicated with regard to a conceivable protection function vis-à-vis the internally displaced.

116. In Sri Lanka UNDP has been providing management support to the Ministry of Reconstruction, Rehabilitation and Social Welfare which handles the relief programmes. The resident representative, in his capacity as resident coordinator, has recruited an adviser on humanitarian programmes. This officer is responsible for advising the United Nations agency team in Sri Lanka on humanitarian issues relating to the conflict, and preparing analytical reports which identify gaps and opportunities for use by the Government, donors and NGOs to make the overall provision of humanitarian needs more effective. The resident coordinator convenes monthly donor-United Nations meetings; he also participates in a monthly meeting of government officials and NGOs, which is convened by the NGOs.

3. The role of UNICEF

117. UNICEF has been the conduit for the procurement of medical supplies and equipment, funded by contributions from several bilateral donors. This assistance has helped to maintain immunization coverage at high levels and to prevent epidemics in all the affected areas. It has also provided school kits to displaced children and in so doing has helped them continue their schooling. Since predictable activities such as school are regarded as one of the most therapeutic measures in helping to reduce the effects of psycho-social trauma, the benefits of this programme cannot be overemphasized. UNICEF activities have, however, remained at a low level.

4. The role of the ICRC

118. The ICRC in Sri Lanka does not itself provide any large amount of relief aid. Its main roles relate to protection issues, such as working with those persons detained by the Government, and operating a tracing programme for reuniting families. It helps the delivery of the food to the areas where the Government does not have uninhibited access, with Red Cross trucks and ships. It assists the Sri Lankan Red Cross in its medical operations (such as the mobile clinic that visits camps), and, together with the Sri Lankan Red Cross, it runs the hospital in the Jaffna peninsula. Many NGOs expressed gratitude for the presence of the ICRC, which has enabled them to become operational also.

5. The role of other international agencies

119. The World Health Organization, the Food and Agriculture Organization of the United Nations, the World Food Programme, the International Monetary Fund, the World Bank and the International Labour Organisation all have a presence in the country and are involved in one way or the other in the issues of the internally displaced.

6. The role of the NGOs

120. The Representative met with the NGO consortium in Colombo, in Trincomalee and in Batticaloa. There is a large number of NGOs involved with relief, rehabilitation and development programmes in Sri Lanka, which is said to have a tradition of a pluralistic and vigorous NGO sector. Most are small village-level groups, although a few are quite substantial. There are also a number of international NGOs, some of which are operational, while others provide funds to local partners. Much of their work is done in areas such as education, health or agriculture. Some observers have found that local, community-oriented projects implemented by NGOs had beneficial effects for the local population. In addition, the human rights NGO community has been developing in the last 20 years, although it is less active today in view of the increased threats to the security and life of their members.

121. The activities of the NGOs are of great importance to the relief effort, as government funds are not sufficient to maintain all camps and NGOs have much greater freedom of action in applying funds. Government officials, including the military, at all levels, expressed appreciation and gratitude for the work of the international and local NGOs with the internally displaced. In Ampara, where the NGO sector is not as numerous, many among the Government and the displaced expressed the wish that more NGO presence would be established. On the whole, there was agreement on the fact that NGOs provided a significant degree of de facto protection to the displaced population, by the mere fact of their presence for humanitarian reasons and their delicate means of reporting and monitoring the situation on the ground.

7. The role of the donor community

122. The Representative also had a meeting with the donor community, whose members expressed the view that it was the responsibility of the Government of Sri Lanka to provide protection and assistance to its internally displaced and that they were keen not to undertake any measures that might undermine that responsibility. They thought that channelling assistance to UNHCR or to the NGOs was beneficial; they also reported that the Government had not specifically approached them on the question of assistance to those displaced or resettled. One representative expressed the opinion that his Government would consider a positive response, if approached, while another observed that they were not inclined to fund the resettlement and rehabilitation project, because they felt that not enough was being done to resolve the conflict.

F. The quest for durable solutions

123. In the case of displaced persons, as in the case of refugees, there are three conceivable ways in which a person ceases to be in a state of displacement: return to the original place of residence, integration with the local community or resettlement in a third area. The solution deemed best is "repatriation" in the case of refugees (i.e. externally displaced persons). Arguably, this is true for many of the internally displaced in Sri Lanka and is the premise of the resettlement and rehabilitation programme of the Government in some areas in the north and east of the island.

124. Return to one's original area of residence and to one's own home can be spontaneous or organized by third parties. Spontaneous returns are deemed to be the best indicators that peace and security have returned to the land (in other words, that "normalcy" has been restored). Often, however, the displaced do not have accurate information regarding the exact situation in their home areas, or if they do, will need assistance with transportation as well as rehabilitation once they have returned. The Government of Sri Lanka takes all these factors into account, as is reflected in its guidelines.

125. As the Government has stressed, if the conditions in the home area are not secure enough, the displaced may not wish to return there. Furthermore, even if they do return, the resumption of hostilities may cause their displacement yet again. The tragedy of any instance of sudden and violent displacement is so overwhelming that all measures should always be taken in order to exclude the possibility that it might occur. Therefore, it would seem that unless peace is restored, the process of return to one's home area is doomed to be precarious. This is also reflected in the unwillingness of donor Governments and agencies to support financially resettlement and rehabilitation programmes on a large scale, as they would include the building of infrastructure and would be too risky to undertake in a case where war is still going on.

126. Many government officials candidly expressed their conviction that the war would be hard to end in the near future. Although the army is large (there is no military duty in spite of the conflict, in part, perhaps, because the unemployed youth of the south are recruited into the armed forces), the LTTE have shown their strength. Many sources said that the power of the LTTE lies essentially in their cause: the Tamil community perceives them as the only ones capable of defending the "Tamil cause"; therefore, recruitment and mobilization, especially after any heavy LTTE casualties, are massive and frequently voluntary. Steady financial assistance to the LTTE is apparently also not lacking.

127. At the same time, the LTTE are perceived even among sections of the Tamil community to be organized along non-democratic lines: they have decimated their opposition and their human rights record vis-à-vis their own community as well as the Muslims and the Sinhalese, has in the past one of the grimmest. They are also said to be unpredictable and uncooperative, and their intelligentsia is said to be not particularly influential. They are, however, considered the only credible Tamil group in terms of power and even those in the Tamil community who deplore their activities and structure seem to welcome their existence.

128. Some senior government officials acknowledged to the Representative that without addressing the root causes in the country the problem of displacement cannot be effectively solved. Others indicated that seeds of a political settlement to the conflict were already in place. One such example is the current structure of the provision of relief assistance in the territories controlled by the LTTE. Another is the effective implementation of those provisions of the Indo-Lanka Accord with regard to the provincial councils. This issue is currently under litigation and according to one source it could have constitutional repercussions and speed up the process of devolution of power. A third one is found in the recent report of the Parliament Select

Committee. In its final deliberations the Committee decided against the merger of the northern and eastern provinces, which prompted the Tamil parties to walk out. On the other hand, the Committee also concluded on a "quasi-federal" structure along the lines of the Indian Constitution. Many different sources across the political spectrum told the Representative that had the issue of the merger not become so polarized, significant headway could have been made on the issues of devolution of power and protection of minorities, which in their view were the crucial issues.

129. The current political situation, however, with presidential elections coming up in 1994, seems to compel different considerations. In addition, the Government has always been reluctant to accept external mediation in what it considers an internal affair, which in the minds of many is a "terrorist" problem meriting a military solution. Public opinion tends to be recalcitrant towards all suggestions of outside involvement, perceiving them as too humiliating and inappropriate to the stature of the country. In the eyes of many Sri Lankans, however, less emotional approaches would serve the cause of peace more effectively. The Government seems to be winning the "war of hearts and minds" both in Sri Lanka and abroad, yet this gain could disappear overnight should the army press for a military solution and attempt to recapture the Jaffna peninsula.

130. While the Government has been implementing its resettlement and rehabilitation programme for those who were displaced from the so-called "cleared" areas, less planning seems to have been undertaken for the future of communities originating from "uncleared" areas. The Representative met with both Sinhalese and Muslim displaced persons who had fled the fighting or who were evicted by the rebels, and whose prospects for returning to their home areas in the near future are slim. Most often they expressed the wish that the Government would devise a scheme of granting or leasing them land to cultivate. They were willing in such a case to move to another area. The response of one senior government official to this was that the Government had to be very careful not to alter the demographic situation in any area. The Representative was not in a position to reach any conclusion as to whether there is Crown Government land available in areas which are predominantly Muslim and where arrangements for resettling the Muslim displaced would not be as sensitive; one source indicated that this was actually the case.

131. With regard to the possibilities of integration with the local community for those whose prospects of returning to their home area did not seem feasible, this did not appear to be excluded outright, although many sources cited conflicts and disagreements concerning job opportunities. One observer suggested the creation of joint committees of the displaced and the host population, in which NGOs or the clergy and the local authorities would participate, which would attempt to find solutions to such disputes. There did not appear to be a lack of agricultural opportunities, at least in the areas the Representative visited, but the displaced would need capital for this, in addition to the cooperation of the local community and politicians. Other measures could also be taken: for instance, in a Sinhalese camp in Puttalam the people said they hoped that the Government would "fill in" the marsh around their camp, so that they could start some cultivation.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Observations on issues

1. Definition of "internally displaced persons"

132. In his comprehensive study submitted to the Commission at its forty-ninth session, the Representative identified a number of tensions with regard to the definition of "internally displaced persons". The working definition suggested in that study was the one used in the analytical report of the Secretary-General, namely, that "internally displaced persons" are "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country" (E/CN.4/1992/23, para. 17). It has been argued by some sources that the definition should not be interpreted in such a way as to exclude small numbers or even individuals who are internally displaced. Another concern was that it would be undesirable to distinguish between civilian populations displaced by armed conflict and those who have not been displaced, but whose needs are similar.

133. While it is often true that the category to which a person is assigned has consequences for the type of relief assistance to which he or she is entitled, in Sri Lanka the Representative did not identify any major gaps in terms of the provision of relief assistance due to the lack of a general and agreed-upon definition of the term "internally displaced". The need for and type of such assistance is much more evident in the case of the camps. Those who are displaced but who are being accommodated with friends or relatives or have managed on their own presumably are harder to delineate as a group for assistance purposes. In terms of entitlements, therefore, it is important that if different groups need different types of assistance, they be defined in practical terms suitable for the specific circumstances in the country. This does not undermine the need of a general definition of the term "internally displaced"; it simply requires that any such definition retain a margin of flexibility to accommodate to the particular conditions in the country. (In practice this is true for refugees also: while a general definition exists at the international level, regional and country situations have compelled the formulation of other subcategories or even alternative definitions.)

134. Generally, therefore, the situation in Sri Lanka confirms that it is very hard to reach a satisfactory and accurate definition. At the same time it exemplifies the fact that a large proportion of the internally displaced can be easily identified by virtue of the fact that they are housed in special camps and that they have special needs for assistance and protection different from the ones for the rest of the population. Another point to bear in mind is that most of these people have been uprooted because of the conflict, and that while many fled the violent incidents of 1983 or 1990, others may have left their homes less "suddenly" but for equally compelling reasons (e.g. military operations in a particular area, mines, etc.).

2. Protection of human rights

135. From the point of view of protection of human rights, the Representative was able to establish that at least in Sri Lanka the displaced are more vulnerable than the rest of the population in certain ways: they may be forcibly resettled; more readily subjected to round-ups, arbitrary detentions or arrests; deprived of their dry rations or more frequently unable to get jobs. Those not displaced have been identified as being more self-sufficient and more resilient to the destructive impacts of the conflict.

136. The issue of resettlement to the original areas of residence in Sri Lanka has highlighted at least one problem which affects only those displaced: the extent to which the authorities of a country are allowed to compel an internally displaced person to return to an area where his/her life, personal security or freedom will be threatened for reasons similar to the ones that compelled his or her displacement in the first place. It is impossible to provide a full legal analysis in the context of this report. Arguably, however, the principle of non-refoulement, which is the foundation of refugee law, could be applied by analogy in the case of internal displacement. The freedom of movement as well as various other instruments prohibiting population transfers support and strengthen this assumption. Obviously, fundamental human rights such as the right to life, physical integrity and personal security, which are guaranteed, for instance, in the International Covenant of Civil and Political rights, run counter to practices that place them in serious and actual danger.

137. Irrespective of the precise legal basis, physical coercion or the threat thereof or the use of food as a tool or any other similar means to compel the internally displaced to return to an area where they would not be secure is unacceptable. Clarifying the precise legal principles can only sharpen this conclusion and provide a means of empowerment to the potential victims.

138. The need to clarify a quasi-non-refoulement principle for situations of internal displacement in a case like Sri Lanka will inevitably require formulating a definition of the term "internally displaced person". From a factual point of view, this person will frequently have fled because of a well-founded fear of being targeted and victimized in the course of an armed conflict or systematic violations of human rights. Violence in Sri Lanka offers just one more example of the fact that both the armed conflict and the violations of human rights occur in the context of ethnic, racial, religious, political or social cleavages. Even if it is argued that the Government is not at all responsible for these cleavages and the resulting violence, sending the displaced back to a dangerous situation amounts effectively to the same type of targeting and victimization. In such a situation it can be argued that the internally displaced person can no longer count on the protection of his/her own country as promised by the authorities.

139. Human rights law on its own is never sufficient for the effective protection of human rights. The lack of an effective judicial system almost precludes the implementation of these rights. The Representative was told in Sri Lanka that no legal problems have arisen from the situation of internal displacement at the judicial level. This contrasts sharply with the complaints voiced by the internally displaced themselves. It can only be

explained by the general observation that the poorest and dispossessed layers of a society rarely have effective access to the judicial system. Given the number of internally displaced persons in Sri Lanka, the problems identified may be, for the bar associations and the NGOs, issues worth seizing and challenging in the courts.

3. The involvement of the international community

140. There are three conceivable levels on which mechanisms to monitor the provision of assistance and protection to the internally displaced can be envisaged: the country level, the regional level and the international level. For different situations different types of activities at these levels are required as illustrated by such cases as Somalia, Liberia or Sri Lanka.

141. In a country like Sri Lanka it appears appropriate to say that there is no need for a massive mobilization at the international or the regional levels either to provide large amounts of relief assistance or to intervene in order to protect the internally displaced. In Sri Lanka the humanitarian presence of the United Nations agencies and the international NGOs and the significant leverage of the donors afford de facto a significant amount of protection. While their operations may be conducted on an ad hoc basis, this is not necessarily negative: it only exemplifies that dealing with problems in the field often requires ad hoc solutions, and that these solutions are frequently concrete evidence of the will to address the problems in a creative and effective manner.

142. Many have argued that these ad hoc solutions should remain marginalized and "fluid" and that any attempt to either place them in existing structures or try to create new structures to fit them in will only destroy them. These arguments refer both to the ad hoc nature of the involvement of the United Nations agencies and to the de facto nature of the protection they afford to the internally displaced. Therefore, according to these arguments, emphasizing the need for some monitoring presence in the camps, not only for humanitarian but also for human rights purposes, on a regular basis and making representations to the Government on behalf of the displaced would not work. Also, many believe that institutionalizing a post of a United Nations officer on internally displaced persons and placing him or her either under UNHCR or UNDP auspices would not be an idea agreeable either to the Government or to these agencies.

143. Despite the rationale of these attitudes, the Representative has found that both the operations of UNHCR and of UNDP vis-à-vis the internally displaced in Sri Lanka have beneficial effects on that population and should be studied and analysed more carefully.

144. The need to ensure some monitoring presence at the regional level has been stressed by many sources. While contacts with regional organizations, such as the Conference on Security and Cooperation in Europe or of its High Commissioner for National Minorities, the Organization of American States or the Organization of African Unity, need to be established, the Representative hopes to suggest additional means of collection of information on the regional level.

145. At the international level the Representative is convinced that there is a need for an effective mechanism to have a regular dialogue with the Governments concerned in order to study and analyse the problem in the respective countries and attempt jointly to find solutions. The Representative currently has the possibility to undertake only very few substantive missions a year, with no provision and no resources for follow-up visits. This curtails greatly his ability to alert the international community to each and every situation of internal displacement that occurs in the world or take himself any steps to even register them. He is, therefore, committed to submitting as soon as feasible concrete suggestions and proposals as to this issue. Given the complexities, however, as well as the sheer magnitude of the problems involved, any such suggestions can only be modest attempts to deal with some aspects of the problems rather than with the generic problems themselves.

4. Addressing the root causes

146. The conclusion of the Representative on the situation in Sri Lanka is that unless a political solution to the conflict is found, there can be little hope either of ending the conflict or of solving the problem of internal displacement. The United Nations, or more generally the international community, does not have a mandate to intercede with the Government on this issue, although the Government welcomes their presence and assistance. The Representative does not perceive himself as, nor does he have the mandate of a peace negotiator. However, if he limited his analysis only to the interim situation of the displaced in Sri Lanka, without regard to their long-term prospects of returning home, he would be taking an obvious step with only short-term and limited prospects. He is convinced that it is time that the parties to the conflict should balance carefully their considerations for continuing the war and for jeopardizing the welfare of the people of Sri Lanka. He also believes that the international community should exhibit an interest not only in providing financial assistance but also in ensuring that such assistance advances the cause of peace, security and stability in the country.

B. Specific proposals

1. The nature and scope of assistance

147. As long as internal displacement persists, assistance to the affected population, food rations being the absolute minimum, will continue to be urgently needed. Other services, such as the quality of shelter and sanitation, also need improvement, especially as displacement appears destined for long duration in the absence of peace. Alternative forms of assistance may also need to be devised for other vulnerable groups. Where the need exists, any discriminatory practice in the provision of assistance or other benefits should be avoided.

148. On the other hand, the constraints on the resources available to the Government will naturally limit the scope and level of possible assistance. This is one of the reasons why income-generation projects and the provision of employment opportunities should be placed high on the Government's agenda.

149. The current level of the provision of education is laudable and needs to be maintained. Where facilities are inadequate, efforts are needed to address these inadequacies to keep a uniform level in this area of commendable accomplishment.

2. With regard to the security situation

150. Efforts to identify missing or disappeared persons and inform their families need to be intensified, especially as aspects of family security may depend on the status of these missing members.

151. Militant groups should be discouraged from presence in the welfare centres since that tends to provoke adverse relations with the authorities and threaten the security of the civilian population.

152. Cordon and search operations in or around welfare centres also need to be avoided as far as possible, unless serious security exigencies dictate otherwise. Likewise, military presence and operations in or near the welfare centres and resettlement sites need to be kept to an absolute minimum.

3. The issue of resettlement

153. Sincere efforts should be made to comply with the Government's resettlement guidelines which should be made more widely known to the local authorities, the NGOs and the displaced.

154. Any type of coercion, including the threat of cutting dry rations to induce return, should be avoided. Conditions in the camps should not be allowed to become so perilous or dehumanizing that the displaced prefer the fear of being persecuted or victimized to remaining in the camps.

155. Accurate information regarding the conditions of security and welfare in the area of original residence should be provided to those to be resettled. The relevant committees already in operation should be supported to enhance their efforts in this regard.

156. The development of procedural safeguards for the voluntary nature of the resettlement needs to be considered. For instance, those to be resettled may be required to sign a form declaring their wish to resettle. Such a form would be similar to the one that UNHCR uses for its voluntary repatriation programmes.

157. Efforts should be made to avoid giving those to be resettled misleading information regarding the benefits they are to expect from the resettlement. Such expectations can only lead to disappointment and increase the already existing tensions.

158. To allow time and flexibility in addressing the complex issues involved, resettlement should not be carried out with a rigid time schedule. The issue of resettlement is currently connected to the projected referendum and the local elections. It is therefore seen as having become politicized and too rigorously programmed. To the extent that the referendum and the local

elections are predicated on the resettlement programme, the Government may have to consider postponing them to allow for a smoother, more acceptable process of resettlement.

4. The search for durable solutions

159. As the settlement projects of populations in the east at this stage appear to be particularly controversial, careful reconsideration of those projects may be necessary. Such reconsiderations also require that members of the communities who originate from that area be given special attention in the settlement process.

160. Priority needs to be given to developing alternative long-term solutions for those communities that will not be able to return to their original areas of residence in the foreseeable future.

161. Efforts to come to a negotiated peace agreement need to be vigorously pursued. If the war continues, the prospects of maintaining peace and security even in those areas that are now relatively peaceful may be seriously jeopardized.

162. As increased freedom of information and expression of opinion would facilitate the spread of peace initiatives, publicize the plight of the displaced and give a clear picture of the magnitude of the war and its consequences, initiatives and efforts in that direction should be encouraged and supported.

163. The undertaking made by the Government of Sri Lanka at the forty-ninth session of the United Nations Commission on Human Rights that it will review, revise and compile the Emergency Regulations and that it will explore all avenues to arrive at a negotiated political solution should also be pursued and supported.

5. The legal framework

164. The Government has been urged to sign Protocol II Additional to the Geneva Conventions and also to consider signing the other human rights instruments to which it is not yet a party.

165. There is also an urgent need to address legally any outstanding discriminatory practices on the basis of ethnicity, religion and language and to reverse any public tendencies that may operate to the disadvantage of the minorities.

6. The role of the United Nations agencies

166. The presence of UNHCR, especially in the Open Relief Centres, has had significant beneficial effects and needs to be maintained. It guarantees not only better living conditions, but also protection. The ORCs play an important role in assisting the people to remain near their homes and return to them whenever it is safe to do so.

167. Given their evident beneficial effects, the operations of UNHCR and UNDP in Sri Lanka should be analysed and built upon. They should be financially supported and their authority to continue these operations should be clarified.

168. The United Nations agencies, in conjunction with the NGOs, should be encouraged to continue their efforts to share information and coordinate their activities.

7. The role of the non-governmental community

169. Lawyers' associations need to be actively involved in the protection of the fundamental rights of the internally displaced.

170. The NGO community should also make efforts to become more operational in areas where the NGO presence is currently limited. The NGOs should be encouraged to operate without undue interference from the State or other combatant parties.

171. The LTTE should also be called upon to abide by the principles of humanitarian law, cease any further expulsions of Muslims or other ethnic communities and to permit the free exit of Tamils from the areas it controls.

8. The role of the donor community

172. International efforts towards a negotiated solution need to be stepped up considerably. Such efforts need to be directed towards both the Government and the LTTE.

173. The donor community is encouraged to channel funds for humanitarian assistance and rehabilitation to NGOs and other international agencies. Such assistance should also be given to the Government, in some instances earmarked for the benefit of the tragic victims of internal displacement.

174. Given the humanitarian tragedy of the conflict raging in Sri Lanka, a strong case can be made for monitoring the manner in which financial or other assistance is used. Donors should scrutinize continuously the progress made in the human rights field and in the efforts to reach a peaceful resolution of the conflict. Foreign assistance should help promote sustainable development, protection of the environment and, above all, peace and security for the country.

C. Concluding comment

175. As a concluding comment, several points need to be highlighted about the Representative's experience with Sri Lanka as a case study. First, both in the magnitude of the crisis and the cooperation of the Government with the Representative and the international community, Sri Lanka is indeed a model to be emulated. Second, the Representative has tried to build on this positive model in an attempt to meet the Commission's and the General Assembly's emphasis on country visits and dialogues with Governments on behalf of the internally displaced. Third, and in conformity with the Representative's commensurate emphasis on country profiles, this report has tried to achieve

the necessary level of depth of description and analysis which he aspires to follow with respect to other country missions and reports. Fourth, that within the framework of mutual cooperation with Governments which Sri Lanka typifies, the report has been rather thorough and candid in exposing the problems to be addressed, the objective being to facilitate a cooperative resolution to the issues involved. Fifth and finally, the width and depth of the coverage of this and other country profiles aim at producing documents that can be helpful to organizations and individuals concerned and actually or potentially involved in the search for solutions to the problems of internal displacement. It is, therefore, hoped that it is a document that combines the necessary level of scholarly depth, intellectual integrity, sound policy and practical utility.

Notes

1/ Comparing these numbers with statistics published by the Government in previous years, it seems that the number of displaced persons has decreased. See for example the report on the visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances, (E/CN.4/1992/18/Add.1), according to which there were 253,937 displaced persons living in welfare centres, 419,748 displaced persons living outside welfare centres but drawing dry rations and 1,090,961 economically affected persons, i.e. persons whose economic livelihood has been substantially affected by the war.

2/ Massive dam projects causing ecological damage and rupturing the social fabric, industrial and natural disasters and dislocation of indigenous peoples also cause the displacement of millions. In this respect it has been noted that irrigation and land development schemes in the Pollonaruwa and Mahiyangana regions during the 1930s and 1940s and the Gal Oya and the Mahaweli projects in later years affected the Veddhas, many of whom were resettled and assimilated to the local farming people. The Veddhas or Wanniya-Laeto (meaning forest dwellers) are a small indigenous minority of less than 1,000 persons who are thought to be the very first settlers of the island. The Veddhas practise their own religion and speak their own language. The Representative did not have an opportunity to visit the areas where the Veddhas now live.

3/ Malcolm Rodgers, Refugees and International Aid, Sri Lanka: A Case Study (for the joint ILO-UNHCR meeting on international aid as a means to reduce the need for emigration, May 1992, provided by Professor Virginia Leary) citing Vasundhara Mohan (1987).

4/ One other group one finds in Sri Lanka are the Burghers, who are descendants of the Dutch either in direct line or intermarried with other groups.

5/ See, generally, David Little, Sri Lanka, the Invention of Enmity, United States Institute of Peace, for a most interesting and thorough account of the revival of Buddhist radicalism and of the use of religion as a warrant for intolerance in Sri Lanka. Chapter I of the present report has relied heavily on this analysis.

6/ See Bernard Anderson, Imagined Communities (1983) at 26.

7/ See Little, supra, at footnote 20 of part one and accompanying text.

8/ History in Sri Lanka, as in the rest of the world, was conveniently reformulated to suit these endeavours. According to one account, of the three ancient Pali chronicles of the island, namely, the Dipavamsa, the Mahavamsa and the Culavamsa, it was the second which was mostly emphasized. While according to the earliest chronicle, the Dipavamsa, Buddha, through his benevolence, elevates the image of the non-violent and compassionate ruler, the Mahavamsa allegedly sets a much more violent precedent by establishing the paradigm of the righteous Buddhist king as the premier member of a cult of heroes believed to be central to the Sinhala religion.

9/ Little, supra, at 82. It is also suggested that this is a common feeling among the Tamil community in the world, which, numerous as it may be, is nowhere in the majority. Consequently, "the expatriates are disposed to contribute financial support to militant Sri Lankan Tamils in what are widely considered to be 'staggering amounts'." Id.

10/ While the Ceylon Tamils are generally a prosperous and well-educated group, plantation Tamils are said to live and work in conditions of misery and poverty and are less educated.

11/ Since January 1993 the entire country has been declared a free trade zone. One paper argues that there are three reasons that Sri Lanka attracts investments from the West: available undeveloped land, cheap labour and more lenient environmental regulations.

12/ Allegedly, British advisers considered it unnecessary to include a bill of rights in the Constitution - the British, after all, did not have one.

13/ In 1964 an agreement was reached between India and Sri Lanka that India would take back 575,000 Indian Tamils who had not opted for Sri Lankan citizenship in 1948 (or who had been rendered stateless by the first Government of Sri Lanka following independence, for fear of their electoral dominance in the central highlands, according to other sources) and had become thereafter disenfranchised, while Sri Lanka would grant citizenship to about 300,000 of them. The agreement was only partially carried out. By 1988, however, Sri Lanka had promised to grant citizenship to the remaining 250,000 stateless plantation Tamils. According to one report, 16,800 still remain without nationality, due to bureaucratic problems.

14/ Also, by disenfranchising the Indian Tamils the position of the left-wing parties, which drew considerable support from them, was weakened.

15/ Tamils claimed this was a deliberate attempt to "colonize" strategic areas of the North to break up geographical continuity and build buffer zones both physically and electorally (for instance, according to one report, by 1971, almost 400,000 Sinhalese were settled in the North, 40,000 carving out a new electorate in the Seruwila area of Trincomalee; Sinhalese in Trincomalee rose from 3 per cent to 30 per cent of the population; the same happened in Batticaloa district, which was divided in 1963 to create a predominantly Sinhalese Amparai district). The Government claimed that much of the disputed territory was underdeveloped Crown land and that the Tamil community could not "reserve" uninhabited territory in perpetuity in the face of the growing need for development. The momentum, according to one source, grew in the 1970s as need for land increased in Trincomalee and Batticaloa districts with the development of two large irrigation and settlement schemes at Mahaveli and Madura Oya funded by the United Kingdom and Canada. Tamils saw Sinhalese settlers as the civilian "shock troops" guarded by government soldiers with a mandate to drive out Tamil civilians in surrounding areas.

16/ The UNP had voted against the adoption of the 1972 Constitution and on coming to power in 1977 drafted the third Constitution which remains in force today. Virginia Leary, Ethnic Conflict and Violence in Sri Lanka (1983).

17/ It is not very clear how effective the two redress mechanisms provided in the Constitution (i.e. fundamental rights petitions and habeas corpus) are. In relation to disappearances, for instance, the members of the Working Group on Enforced or Involuntary Disappearances seem to have concluded that these safeguards were not very effective. This, however, may vary depending on the specific violation in each case.

18/ On 25 November 1993 Sri Lanka's parliament voted 105 to 39 to extend the state of emergency imposed in June 1989 to fight violence across the country.

19/ Violations of human rights in Sri Lanka have been linked to the increased powers of the President to declare a state of emergency. These include the power to make regulations bypassing the normal legislative process (Public Security Ordinance, incorporated into the 1978 Constitution) and to appoint any person as "competent authority" for the purposes of any emergency regulation for the entire country or for any specific area or place. Upon the declaration of an emergency in a province, the President may assume the powers and the responsibilities of the provincial authorities in respect of public order in that province. Sri Lanka has been under a state of emergency since 1983, apart from the period from January to June 1983 and a short period in February 1990. The existence of a state of emergency cannot be called into question in any court, although there are certain legislative requirements and safeguards which have been bypassed in the process.

20/ One source mentions that India was becoming increasingly dissatisfied with the way the Tamil problem was being handled and the prospect of a bloody campaign against the Tamils. Other sources have mentioned that India had complex political motives and did not want to defeat the LTTE outright but rather to force them to the negotiating table (in an attempt to "control" an emergent Sri Lanka with a strong army).

21/ Another result was the fragmentation of the separatist movement (such splinter groups as the Tamil Ealam Liberation Organization (TELO) and the People's Liberation Organization of Tamil Ealam (PLOTE) appeared at that time).

22/ Ministry of Reconstruction, Rehabilitation and Social Welfare, Emergency Reconstruction and Rehabilitation Programme, Dec. 1992, at iii.

23/ A newspaper report notes that 10,000 tonnes of food on average are dispatched to Jaffna each month.

24/ "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities ... shall in all circumstances be treated humanely, without any adverse distinction founded on race ... religion or faith or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person ...

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment; and

...

2. ... An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."